Holiday Villages of Malaysia Sdn Bhd v YB Menteri Sumber Manusia & Anor

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO C-01–51 OF 2008
SURIYADI, WAN ADNAN MUHAMAD AND RAMLY ALI JJCA
15 APRIL 2009

Administrative Law — Exercise of administrative powers — Discretion — Circumstances where an administrative authority's exercise of discretion may be interfered with

Administrative Law — Remedies — Judicial review — Categories under which administrative authority's decision may be judicially reviewed — Illegality, irrationality and procedural impropriety — Whether established

Administrative Law — Remedies — Judicial review — Duty of High Court in cases of judicial review — Whether High Court to act as appellate court — Whether High Court to be concerned with merits of decision reviewed — Discretion of High Court, exercise of — When subject to appellate interference

Labour Law — Trade unions — Recognition — Decision of Minister to accord recognition — Whether decision open to review on merits — Whether decision could only be quashed on jurisdictional grounds — Industrial Relations Act 1967 s 9

The second respondent union claimed recognition from the appellant to represent its employees. The recognition claimed was in respect of the appellant's permanent and seasonal employees as at 10 September 1997, save for those employees serving in managerial and certain other capacities. The appellant failed to respond and the Director General of Industrial Relations ('DGIR') was informed of the claim. Subsequently, the Director General of Trade Unions ('DGTU') conducted a membership verification which revealed that 59.32% of the appellant's permanent and seasonal employees were members of the second respondent union. Consequently, the first respondent accorded recognition to the second respondent. The appellant contended that it was impossible for more than 50% of its employees to be members of the first respondent as its own verification of union membership

showed less than 10% of its permanent employees were union members. Dissatisfied with the first respondent's decision to accord recognition, the appellant applied to the High Court for judicial review and for an order of certiorari to quash the decision of the first respondent. The High Court dismissed the appellant's application and thus the appellant appealed to the Court of Appeal.

Held, dismissing the appeal with costs:

(1) The court does not act as an appellate court in cases of judicial review. Judicial review is not concerned with the merits of a decision but with the manner in which the decision was made. In a judicial review the court quashes an administrative decision without substituting its own. This is in contrast with an appeal where the appellate tribunal substitutes its own decision on the merits for that of the administrative officer (see para 8); *Reg v Entry Clearance Officer, Bombay, ex p Amin* [1983] 2 AC 818 followed; *Minister of Labour, Malaysia v Lie Seng Fatt* [1990] 2 MLJ 9 and *National Union of Hotel, Bar and Restaurant Workers v Minister of Labour & Manpower* [1980] 2 MLJ 189 referred.

(2) Where an administrative authority has exercised its discretion without improper motive, the exercise of its discretion must not be interfered with, unless it can be shown that the particular authority had misdirected itself, taken into account irrelevant matters, failed to consider relevant matters or that its decision militated against the object of a statute (see para 9); *Minister of Labour, Malaysia v Lie Seng Fatt* [1990] 2 MLJ 9 followed.

(3) There are three categories upon which an administrative decision may be judicially reviewed, namely illegality, irrationality and procedural impropriety. Illegality refers to a situation where the administrative authority is guilty of an error of law in its action, such as exercising power it did not have. Irrationality refers to a situation where the authority exercises a power in a very unreasonable manner ('Wednesbury unreasonableness'). Procedural impropriety refers to a situation where there is a failure on the part of the authority to observe procedural rules expressly set out in statutes or statutory instruments conferring upon such authority its jurisdiction (see paras 10–11); *Council of Civil Service Union & Ors v Minister for the Civil Service* [1985] 1 AC 374; [1984] 4 All ER 935 followed.

(4) In the instant case, illegality and irrationality had not been established at all. In order to establish procedural impropriety, the appellant had to establish that the procedural steps taken by the first respondent in order to accord recognition to the second respondent, were not in compliance

with the relevant law. However, the Court of Appeal was satisfied that the steps or processes prescribed by the relevant laws had been strictly followed by the DGIR, DGTU and the first respondent before the first respondent accorded recognition to the second respondent (see paras 12–13 & 25).

(5) The appellant's main contention was that seasonal employees should be excluded from the verification exercise. However, from the evidence of the appellant's own letters to the first respondent, the appellant wanted both permanent and seasonal employees to be included in the verification. The High Court judge was thus correct in holding this issue to be a non-issue (see para 26).

(6) The Court of Appeal would agree with the High Court's finding that the first respondent had sufficiently given reasons to accord recognition to the second respondent. There was sufficient evidence for the first respondent to consider and to make his decision to accord recognition. The decision of the first respondent was a decision any decision maker similarly circumstanced would make. It was not outrageous or in defiance of logic. It was not also tainted with any 'Wednesbury unreasonableness'. The decision of the first respondent could not therefore be considered as irrational (see paras 28 & 30).

(7) There was a presumption that the High Court judge had rightly exercised her discretion. The Court of Appeal would not interfere unless it was clearly satisfied that the High Court's discretion had been exercised on a wrong principle or that there had been a miscarriage of justice (see para 31); *Ratnam v Cumarasamy & Anor* [1965] 1 MLJ 228 referred; *Charles Osenton & Co v Johnston* [1942] AC 130 and *Evans v Bartlam* [1937] AC 473 referred.

(8) In coming to his decision to accord recognition to the second respondent, the first respondent was acting on his powers under s 9(5) of the Industrial Relations Act 1967 ('Act'). In view of the ouster provision under s 9(6) of the Act, the first respondent's decision could only be quashed on jurisdictional grounds and not on merits. Thus, in the instant appeal, the Court of Appeal would not interfere with the merits of the first respondent's decision (see paras 32–33).

(9) In the instant case, the appellant had failed to show that the first respondent and his officers had acted outside the scope of powers conferred under the Act and the relevant regulations. The relevant provisions under the Act and related regulations had been strictly followed. The first respondent's decision could not therefore be termed illegal. The appellant had also failed to show that the first respondent's decision was irrational or procedurally improper so as to enable the High Court to exercise its discretion for judicial review. The High

A Court judge had not exercised her discretion on a wrong principle. There had been no miscarriage of justice resulting in the exercise of her discretion (see paras 34–35).

[Bahasa Malaysia summary

B

Responden kedua persatuan menuntut pengiktirafan daripada perayu untuk mewakili pekerja-pekerjanya. Pengiktirafan tersebut dituntut berkaitan pekerja-pekerja tetap dan bermusim perayu-perayu setakat 10 September 1997, kecuali untuk pekerja-pekerja yang berkhidmat dalam kapasiti C pengurusan dan selainnya. Perayu telah gagal untuk menjawab dan Ketua Pengarah Perhubungan Perusahaan ('KPPP') telah dimaklumkan tentang tuntutan ini. Berikutan itu, Ketua Pengarah Persatuan Sekerja ('KPPS') telah menjalankan pengesahan keahlian yang menunjukkan bahawa 59.32% daripada pekerja-pekerja tetap dan bermusim perayu merupakan ahli-ahli D responden kedua persatuan. Kemudian, responden pertama telah memberikan pengiktirafan kepada responden kedua. Perayu-perayu menegaskan bahawa adalah mustahil lebih 50% daripada pekerja-pekerjanya menjadi ahli-ahli responden pertama kerana pengesahan keahlian persatuannya sendiri menunjukkan bahawa kurang 10% daripada E pekerja-pekerja tetapnya merupakan ahli-ahli persatuan. Berasa tidak puas hati dengan keputusan responden pertama untuk memberikan pengiktirafan, perayu telah memohon ke Mahkamah Tinggi untuk semakan kehakiman dan untuk perintah certiorari bagi membatalkan keputusan responden pertama. Mahkamah Tinggi telah menolak permohonan perayu dan oleh itu perayu F membuat rayuan ke Mahkamah Rayuan.

Diputuskan, menolak rayuan dengan kos:

G

(1) Mahkamah tidak bertindak sebagai mahkamah rayuan dalam kes-kes semakan kehakiman. Semakan kehakiman tidak mementingkan merit keputusan tetapi cara keputusan itu dibuat. Dalam semakan kehakiman mahkamah membatalkan keputusan pentadbiran tanpa H menggantikannya. Ini adalah bertentangan dengan rayuan di mana tribunal rayuan menggantikan keputusannya sendiri atas merit dengan pegawai pentadbir (lihat perenggan 8); *Reg v Entry Clearance Officer, Bombay, ex p Amin* [1983] 2 AC 818 diikut; *Minister of Labour, Malaysia v Lie Seng Fatt* [1990] 2 MLJ 9 dan *National Union of Hotel, Bar and Restaurant Workers v Minister of Labour & Manpower* [1980] 2 I MLJ 189 dirujuk.

(2) Di mana pihak berkuasa pentadbiran melaksanakan budi bicaranya tanpa motif yang salah, pelaksanaan budi bicaranya tidak patut diganggu, kecuali dapat ditunjukkan bahawa pihak berkuasa tertentu

telah salah arah, dengan mengambilkira perkara-perkara yang tidak relevan, telah gagal mengambilkira perkara-perkara yang relevan atau keputusannya menghalang tujuan statut (lihat perenggan 9); *Minister of Labour, Malaysia v Lie Seng Fatt* [1990] 2 MLJ 9 diikut.

(3) Terdapat tiga kategori yang mana keputusan pentadbiran boleh disemak secara kehakiman, iaitu kepenyalahan undang-undang, keadaan yang tidak rasional dan prosedur yang salah. Kepenyalahan undang-undang merujuk kepada keadaan di mana pihak kuasa tadbir bersalah kerana kesilapan undang-undang dalam tindakannya. Seperti melaksanakan kuasa yang tidak dimilikinya. Keadaan yang tidak rasional merujuk kepada keadaan di mana pihak berkuasa pentadbiran melaksanakan kuasa dalam cara yang amat tidak munasabah ('Wednesbury unreasonableness'). Prosedur yang salah merujuk kepada keadaan di mana terdapat kegagalan di pihak berkuasa untuk meneliti peraturan-peraturan prosedur yang telah jelas ditetapkan dalam statut-statut atau alat statutori yang memberikan kuasa sedemikian dalam bidang kuasanya (lihat perenggan 10–11); *Council of Civil Service Union & Ors v Minister for the Civil Service* [1985] 1 AC 374; [1984] 4 All ER 935 diikut.

(4) Dalam kes ini, kepenyalahan undang-undang dan keadaan yang tidak rasional tidak dibuktikan langsung. Bagi tujuan membuktikan prosedur yang salah, perayu hendaklah membuktikan bahawa langkah-langkah prosedur telah diambil oleh responden pertama bagi tujuan memperoleh pengiktirafan kepada responden kedua, yang tidak mematuhi undang-undang relevan. Walau bagaimanapun, Mahkamah Rayuan berpuas hati bahawa langkah-langkah atau proses-proses yang ditetapkan oleh undang-undang relevan telahpun dipatuhi dengan sewajarnya oleh KKPP, KKPS dan responden pertama sebelum responden pertama memberikan pengiktirafan kepada responden kedua (lihat perenggan 12–13 & 25).

(5) Hujah utama perayu adalah bahawa pekerja-pekerja bermusim patut dikecualikan daripada pelaksanaan pengesahan. Walau bagaimanapun, berdasarkan keterangan surat-surat perayu sendiri kepada responden pertama, perayu menghendaki kedua-dua pekerja-pekerja tetap dan bermusim dimasukkan dalam pengesahan. Hakim Mahkamah Tinggi oleh itu betul dalam memutuskan yang isu ini bukan suatu isu (lihat perenggan 26).

(6) Mahkamah Rayuan bersetuju dengan penemuan Mahkamah Tinggi bahawa responden pertama telah memberikan sebab-sebab mencukupi untuk memberikan pengiktirafan kepada responden kedua. Terdapat keterangan mencukupi untuk responden pertama membuat pertimbangan dan membuat keputusannya untuk memberikan pengiktirafan. Keputusan responden pertama adalah keputusan yang

mana-mana pembuat keputusan akan lakukan yang sama. Ia tidak keterlaluan atau tidak wajar. Ia juga tidak dicemari dengan 'Wednesbury unreasonableness'. Keputusan responden pertama oleh demikian tidak boleh dianggap sebagai tidak rasional (lihat perenggan 28 & 30).

(7) Terdapat andaian bahawa hakim Mahkamah Tinggi telah melaksanakan budi bicaranya dengan sewajarnya. Mahkamah Rayuan tidak boleh campur tangan kecuali ia jelas berpuas hati bahawa budi bicara Mahkamah Tinggi telah dilaksanakan atas prinsip yang salah atau terdapat salah laksana keadilan (lihat perenggan 31); *Ratnam v Cumarasamy & Anor* [1965] 1 MLJ 228 dirujuk; *Charles Osenton & Co v Johnston* [1942] AC 130 dan *Evans v Bartlam* [1937] AC 473 dirujuk.

(8) Dalam mencapai keputusannya untuk memberikan pengiktirafan kepada responden kedua, responden pertama telah bertindak atas kuasanya di bawah s 9(5) Akta Perhubungan Perusahaan 1967 ('Akta tersebut'). Berdasarkan peruntukan penyingkiran di bawah s 9(6) Akta tersebut, keputusan responden pertama hanya boleh dibatalkan atas alasan-alasan berkaitan bidang kuasa dan bukan atas merit. Oleh itu, dalam kes ini, Mahkamah Rayuan tidak akan campur tangan dengan merit keputusan responden pertama (lihat perenggan 32–33).

(9) Dalam kes ini, perayu telah gagal untuk menunjukkan bahawa responden pertama dan pegawai-pegawainya telah bertindak di luar skop kuasa-kuasa yang diberikan di bawah Akta tersebut dan peraturan-peraturan relevan. Peruntukan-peruntukan relevan di bawah Akta tersebut dan peraturan-peraturan berkaitan telahpun dipatuhi sewajarnya. Keputusan responden pertama dengan itu tidak boleh dianggap sebagai menyalahi undang-undang. Perayu juga telah gagal untuk menunjukkan bahawa keputusan responden pertama adalah tidak rasional atau mengikut prosedur yang salah bagi membolehkan Mahkamah Tinggi melaksanakan budi bicaranya untuk semakan kehakiman. Hakim Mahkamah Tinggi tidak melaksanakan budi bicaranya atas prinsip yang salah. Tiada salah laksana keadilan telah berlaku dalam pelaksanaan budi bicara beliau (lihat perenggan 34–35).]

Notes

For cases on discretion, see 1 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 24–35.

For cases on judicial review, see 1 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 639–640.

For cases on recognition of trade unions, see 8 *Mallal's Digest* (4th Ed, 2006 Reissue) paras 1659–1682.

Cases referred to

Charles Osenton & Co v Johnston [1942] AC 130, HL (refd)
Council of Civil Service Union & Ors v Minister for the Civil Service [1985] 1 AC 374; [1984] 4 All ER 935, HL (folld)
Evans v Bartlam [1937] AC 473, HL (refd)
Minister of Labour, Malaysia v Lie Seng Fatt [1990] 2 MLJ 9, SC (refd)
National Union of Hotel, Bar and Restaurant Workers v Minister of Labour and Manpower [1980] 2 MLJ 189, FC (refd)
Ratnam v Cumarasamy & Anor [1965] 1 MLJ 228, PC (refd)
Reg v Entry Clearance Officer, Bombay, Ex parte Amin [1983] 2 AC 818, HL (refd)

Legislation referred to

Industrial Relations Act 1967 s 9, 9(2), (3), (3)(b), (4), (4A), (4B), (5)
Trade Union Regulations 1959 regs 63, 64, 65, 66

Appeal from: Originating Motion No 25–9 of 1998 (High Court, Kuantan)

DP Naban (Elizabeth Loo Mui Yuen with him) (Lee Hishammuddin Allen & Gledhill) for the appellant.
Effendi Nazila bin Abdullah (Senior Federal Counsel, Attorney General's Chambers) for the first respondent.
B Lobo (Lobo & Associates) for the second respondent.

Ramly Ali JCA (delivering judgment of the court):

[1] This is an appeal by Holiday Villages of Malaysia Sdn Bhd ('the appellant') against the whole of the learned High Court judge's decision given on 6 March 2004 dismissing its application for judicial review and an order of certiorari to quash the first respondent's decision made on 1 June 1998 to accord recognition to the second respondent to represent all of the appellant's employees, other than those employed in the managerial, executive, confidential and security capacity.

FACTUAL BACKGROUND

[2] The relevant facts as enumerated in the learned judge's grounds of judgment can be summarised as follows:

(a) the appellant, a company which owns and operate an integrated holiday village known as Club Mediterranean Cherating Resort Village, employed two categories of employees, namely permanent and seasonal employees. The seasonal employees are employed for a maximum period of ten months from February to November in a year (whose

employment will cease when the resort closes for business during the 'monsoon period' (late November to January) affecting the east coasts of West Malaysia. The seasonal employees may or may not be employed thereafter, depending on various factors including whether the employees wish to be re-employed by the appellant;

(b) on 10 September 1997, the second respondent claimed recognition from the appellant to represent all the appellant's employees except those in the managerial, executive, confidential and security capacity with effect from 10 September 1997;

(c) since there was no feedback from the appellant, the second respondent on 10 October 1997, informed the Director General of Industrial Relations ('DGIR') about the claim;

(d) the DGIR by a letter dated 25 October 1997, requested the appellant to submit a list of its employees as of 10 September 1997 and the second respondent to submit a list of employees who were members of the union as of the same date;

(e) the second respondent by a letter dated 7 November 1997 complained that the appellant has refused to continue the employment of 80 employees;

(f) the second respondent by a letter dated 26 January 1998 informed the DGIR that the contract of employment of 86.5% of their members had come to an end around the period between 2 November 1997 to 8 November 1997 and only 13.5% continued their employment;

(g) the Director General of Trade Union ('DGTU') by a letter dated 21 January 1998 informed both parties that membership verification will be conducted on 26 February 1998;

(h) by a letter dated 12 March 1998, DGTU informed the DGIR that the membership verification shows 59.32% of employees are members of the union; and

(i) by a letter dated 9 April 1998, the DGIR informed both parties of the result and accordingly the first respondent accorded recognition to the second respondent.

[3] Those facts are not in dispute as are evident from the various affidavits filed by the parties in the High Court.

[4] The appellant protested against the findings of the DGTU that there was at least 59.32% of the appellant's employees were members of the second

respondent at the relevant agreed cut off date ie 10 September 1997. These findings were upheld both by the first respondent as well as by the High Court.

[5] According to the appellant, its investigation of the union membership showed less than 10% of the appellant's permanent employees were members of the second respondent; and it was impossible that 50% of the appellant's permanent and seasonal employees were members of the second respondent.

[6] Dissatisfied with the first respondent's decision the appellant applied to the Kuantan High Court for judicial review and for an order of certiorari to quash the aforesaid decision by way of a notice of motion dated 16 July 1998.

[7] On 6 March 2008 the High Court dismissed the appellant's application. Subsequently the appellant proceeded to file a notice of appeal to the Court of Appeal against the aforesaid High Court's decision.

THE ROLE OF COURT IN JUDICIAL REVIEW

[8] It is trite principle that the court does not act as an appeal court in cases of judicial review. Judicial review is concerned not with merits of a decision but with the manner in which the decision is made. Judicial review in entirely different from an ordinary appeal. It is made affective by the court quashing an administrative decision without substituting its own decision and is to be contrasted with an appeal where the appellate tribunal substitutes its own decision on the merits for that of the administrative officer (this was clearly explained by Lord Fraser of Tullybelton in the case of *Reg v Entry Clearance Officer, Bombay, Ex parte Amin* [1983] 2 AC 818. The same principle was also applied and followed in *Minister of Labour, Malaysia v Lie Seng Fatt* [1990] 2 MLJ 9; *National Union of Hotel, Bar and Restaurant Workers v Minister of Labour and Manpower* [1980] 2 MLJ 189).

[9] In *Minister of Labour, Malaysia v Lie Seng Fatt*, the Supreme Court stressed that as long as the administrative authority concerned had exercised the discretion without improper motive, the exercise of discretion must not be interfered with, unless it can be shown that the particular authority had misdirected itself, had taken into irrelevant considerations or had not taken into consideration relevant matters or that the decision militates against the object of the statute.

[10] According to Lord Diplock in the case of *Council of Civil Service Union & Ors v Minister for the Civil Service* [1985] 1 AC 374; [1984] 4 All ER 935, one can conveniently classify the grounds upon which

A administrative decision is subject to control by judicial review in three categories, namely; illegality, irrationality and procedural impropriety.

[11] 'Illegality' refers to a situation where the authority concerned has been guilty of an error of law in its action ie purporting to exercise a power it does
B not have. 'Irrationality' refers to a situation where the authority exercises a power in so unreasonable manner ('Wednesbury unreasonableness'). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Lastly, 'procedural
C impropriety' refers to a situation where there is a failure on the part of the authority to observe procedural rules that are expressly laid down in the Legislature instruments by which its jurisdiction is conferred even where such failure does not involve any denial of natural justice.

D **[12]** In the present case, the issues of 'illegality' and 'irrationality' have not been established at all. There is no evidence to substantiate the two issue. The court shall now consider whether the issue of 'procedural impropriety' is applicable or not to the facts of the present case.

E **[13]** To establish 'procedural impropriety' the appellant must show that the procedural steps taken by the first respondent in coming to his decision on 1 June 1998 to accord recognition to the second respondent to represent all the appellant's employees, other than those employed in the managerial, executive, confidential and security capacity, were not in compliance with the
F legislative instruments expressly provided under the relevant laws.

[14] The relevant provisions for the recognition of a trade union are provided for under s 9 of the Industrial Relations Act 1967 (Act 177) — ('the
G IR Act').

[15] Section 9(2) of the IR Act provides for the trade union to serve on the employer in writing a claim for recognition. Under s 9(3) an employer who has been served with such a claim may after 21 days from service of the claim:

H (a) accord recognition; or

(b) if the recognition is not accorded notify the trade union concerned in writing the grounds for not according recognition; or

I (c) apply in writing to the Director General of Industrial Relations ('DGIR') to ascertain whether the workmen in respect of whom recognition is being sought are members of the trade union.

[16] If the trade union received a notification under s 9(3)(b) of the IR Act or where the employer concerned fails to comply with s 9(3) of the IR Act the trade union may under s 9(4) report to the DGIR in writing. A

[17] Section 9(4A) of the IR Act provides that upon receiving an application under s 9(3) or a report under s 9(4) the DGIR is empowered to take steps or make inquiries to resolve the matter. In order to perform his function under s 9(4A) the DGIR is vested with the powers to require the trade union, the employer or trade union of employees to furnish any information he deems necessary. B C

[18] The DGIR is also given the discretion under s 9(4B) of the IR Act to refer to the Director General of Trade Union (DGTU) for the DGTU's decision on any question of the competence of the trade union to represent any workmen in respect of whom recognition is sought. D

[19] If the DGIR cannot resolve the matter pursuant to s 9(4A) of the IR Act he shall notify the Minister.

[20] The Minister is required by s 9(5) of the IR Act to give his decision either to accord recognition or otherwise. E

[21] In a situation where a trade union has served a claim for recognition, the DGIR may request the DGTU to carry out a membership check in a manner prescribed by regs 63, 64, 65 and 66 of the Trade Union Regulations 1959 ('TU Regulations'). The purpose is to ascertain the percentage of workmen in respect of whom recognition is being sought; who are members of the union making the claim. F

[22] The DGTU may in writing notify the trade union making a claim for recognition that a membership check would be conducted either by membership verification or by secret ballot. A copy of such notification shall be sent to the employer (reg 63 of the TU Regulations). G

[23] Both the employer and the trade union are to assist the DGTU with information as he may require to enable the DGTU to conduct the membership check (reg 64 of the TU Regulations). H

[24] Regulation 65 of the TU Regulations prescribes the formula to ascertain the percentage of membership by way of membership verification based on the total number of valid members (as at the date of claim). The DGTU shall notify the DGIR the result of the membership check (reg 66 of the TU Regulations). I

[25] After going through all the relevant affidavits filed as well as the grounds of judgment of the learned judge, this court is satisfied that the steps or process as laid down in the relevant laws (IR Act, IR Regulations, TU Act and TU Regulations) have been strictly followed by the DGIR, DGTU as well as the first respondent before coming to the conclusion that 59.32% of the appellant's employees were members of the second respondent as at the cut-off date 10 September 1997 and before the first respondent gave his decision to accord recognition to the second respondent.

[26] The crux of the appellant's appeal is that seasonal employees should be excluded from verification exercise. But in its own letters to the first respondent (before the impungned decision) the appellant wanted both permanent and seasonal employees to be included in the verification exercise. The learned judge noted this and held it was therefore a non-issue. Therefore the 'main issue' was correctly held by the learned judge to be a 'non-issue' based on the appellant's own letters to the first respondent.

[27] In this appeal before this court, learned counsel for the appellant argued that the first respondent had failed to give reasons in coming to his decision to accord recognition to the second respondent; thus the said decision is fundamentally flawed and should be quashed.

[28] This court agrees with the findings of the learned judge (in her grounds of judgment) that the first respondent had sufficiently given his reasons for his decision to accord recognition to the second respondent. These reasons were found in paras 6, 7, 9, 10, 13, 14 and 15 of the first respondent's affidavit and were properly cited by the learned judge at p 24 of her grounds of judgment, and read as follows:

> As to giving of reasons for his decision to accord recognition, this can be found in paras 6, 7, 9, 10, 13, 14 and 15 of the first respondent's affidavit. The first respondent has taken into account the letter of complaint from the second respondent that 80 employees of the applicant had their services terminated as from 6 November 1997 in violation of s 10(2) and (3) of IR Act which made it an offence for an employer to terminate the services of its employees once a claim for recognition is filed; the letter dated 16 December 1997 from the applicant informing that a majority of its seasonal employees had left from 2 November 1997–8 November 1997 and the applicant's support for a membership verification exercise to be done; the Forms B and C forwarded by the applicant and second respondent listing their employees and members respectively and the result of the verification exercise and the manner in calculating the percentage DGTU. The first respondent too has stated clearly and equivocally that he has taken both seasonal and permanent employees into account even though a majority of them had left the applicant's service after November 1997 since these employees are as at 10 September 1997, ie the date recognition was sought still the employees of the applicant.

[29] Learned counsel for the appellant also argued that in coming to his decision without giving any reasons to support it, the first respondent seemed to be acting mechanically and/or not directing his mind to the relevant considerations, by adopting in toto the recommendations of the DGIR and DGTU.

[30] In view of the reasons given by the first respondent in paras 6, 7, 9, 10, 13, 14 and 15 of his affidavit and in view of the fact that this court had agreed to the findings of the learned judge on this matter, this court cannot accept the said argument put forward by learned counsel for the appellant. There is sufficient evidence for the first respondent to consider and come to his decision on 1 June 1998. The first respondent decision is one which any decision maker similarly circumstanced would have made. It is not so outrageous or in defiance of logic. In other words, it is not tainted with any 'Wednesbury unreasonableness'. Therefore the said decision by the first respondent cannot be considered as 'irrational'.

[31] The principles upon which this court will act in reviewing the discretion exercised by the High Court are well settled. There is a presumption that the learned judge has rightly exercised her discretion. The court will not interfere unless it is clearly satisfied that the discretion has been exercised on a wrong principle or that there has been miscarriage of justice (see *Ratnam v Cumarasamy & Anor* [1965] 1 MLJ 228; *Charles Osenton & Co v Johnston* [1942] AC 130, and *Evans v Bartlam* [1937] AC 473).

[32] In coming to his decision to accord recognition to the second respondent, the first respondent was acting on his powers under s 9(5) of the IR Act. Section 9(6) of the IR Act clearly stipulates that:

> A decision of the Minister under subsections (1D) or (5) shall be final and shall not be questioned in any Court.

[33] In view of these ouster provisions, the first respondent's decision can only be quashed on jurisdictional grounds but not on merits. Therefore in the present appeal, this court will not interfere on the merits of the first respondent's decision.

CONCLUSION

[34] On the above considerations, this court is satisfied that the appellant has failed to show the first respondent and his officers have acted outside the scope of powers conferred upon him under the IR Act (Act 177) and the relevant regulations. In fact the processes as laid down in s 9 of the IR Act and

A the relevant regulations have been strictly followed. Therefore the first respondent's decision cannot be said to be 'illegal'.

[35] The appellant has also failed to show that the decision of the first respondent was 'irrational or procedurally improper' so as to enable the High
B Court to exercise its discretion for judicial review. The learned judge had not exercised her discretion on a wrong principle; and that there has been no miscarriage of justice resulting in her exercise of the discretion.

[36] The appellant has failed to show any valid or cogent grounds upon
C which the High Court can exercise its discretionary power of judicial review and to quash the decision of the first respondent. The learned High Court judge was right in dismissing the appellant's application with costs.

[37] Therefore, this court unanimously holds the present appeal is
D dismissed with costs. Deposit to the account of taxed costs. The decision of the learned High Court judge is affirmed.

Appeal dismissed with costs.

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Reported by Andrew Christopher Simon

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